

FOR THE DISTRICT OF DELAWARE

CHRISTINA MONGELLI,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
RED CLAY CONSOLIDATED SCHOOL	:	
DISTRICT BOARD OF EDUCATION; IRWIN	:	
J. BECNEL, JR, CHARLES CAVANAUGH,	:	Civil Action No. 05-359 SLR
GARY LINARDUCCI, LORETTA C. RICE,	:	
JAMES D. TAYLOR, MARTIN A.	:	
WILSON, SR., individually and in their official	:	TRIAL BY JURY DEMANDED
capacities as members of the Red Clay	:	
Consolidated School District Board of	:	
Education; ROBERT J. ANDRZEJEWSKI,	:	
individually and in his official capacity as	:	
Superintendent of the Red Clay Consolidated	:	
School District; and RED CLAY	:	
CONSOLIDATED SCHOOL DISTRICT,;	:	
Defendants.	:	

STIPULATION**Background**

1. On September 6, 2005, the Defendants filed an Answer to the Complaint. Also, on September 6, 2005, the Defendants filed a Motion to Dismiss all claims under Title VII of the Civil Rights Act of 1964, filed against the individual Defendants and/or for an Order Awarding the Individual Defendants' Qualified Immunity from Plaintiff's claims under 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution (hereinafter, the "Motion"). On September 7, 2005, the parties also entered into a stipulated briefing schedule with respect to the Motion.

2. At the time that the Answer and Motion were filed, Plaintiff's counsel was

recuperating at home from surgery to repair a partially detached retina, which had taken place on August 30, 2005. Through phone conversations with defense counsel, Barry M. Willoughby, Esquire, Plaintiff's counsel became aware of the Motion to Dismiss and Stipulation and agreed to the Stipulation, which was signed by another attorney in Plaintiff's counsel's office.

3. Plaintiff's counsel was not aware, however, that an Answer had been filed. Plaintiff's counsel returned to work on a full-time basis on October 3, 2005.

4. On October 20, 2005, the Defendants filed their Opening Brief in support of the Motion to Dismiss. After reviewing Defendants' Brief, it became apparent to Plaintiff's counsel that the claims asserted in the Complaint needed to be clarified and also that an additional claim should be asserted.

5. In the belief that the Defendants had not filed an Answer to the Complaint, Plaintiff filed a First Amended Complaint, without seeking leave of the Court, on October 31, 2005. Because Defendants had, in fact, filed an Answer, the Plaintiff should have sought leave of the Court for permission to file the First Amended Complaint.

THEREFORE IT IS HEREBY STIPULATED by and between the undersigned, subject to the approval of the Court, as follows:

(A) The Defendants do not object to the filing of the First Amended Complaint and the parties jointly request that the Court allow the filing of the First Amended Complaint as if leave of the Court had been obtained in accordance with *Fed. R. Civ. P.* 15.

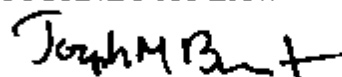
(B) The Plaintiff has withdrawn with prejudice her claims previously asserted against the Individual Defendants, in both their individual and official capacities, under Title VII of the Civil Rights Act of 1964.

Amendment to the United States Constitution.

(D) The Plaintiff having withdrawn with prejudice the claims that were the subjects of the Motion, Defendants' Motion to Dismiss is now moot.

(E) The Defendants shall have until Wednesday, November 16, 2005 to file an Answer to the Amended Complaint and may, at their option, file an additional Motion to Dismiss and/or for an Award of Qualified Immunity at that time.

JOSEPH M. BERNSTEIN,
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Attorneys for Defendants

SO ORDERED, this ____ day of _____, 2005

Sue L. Robinson, District Judge